Griffith UNIVERSITY

Charter of Rights for Victims of Crime
Legislation, Policy and Programs
Justice and Community Safety Directorate
GPO Box 158
Canberra ACT 2601

Dear colleague

REVIEW OF THE ACT *VICTIMS OF CRIME ACT* AND RELATED MATTERS

I would be grateful if you would accept a late submission for your review of the ACT *Victims of Crime Act* and related matters. I do apologise if the late submission causes any inconvenience.

Please do not hesitate to contact me if you have any questions.

Yours sincerely

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SUBMISSION TO THE OPTIONS PAPER FOR REFORM OF THE *ACT VICTIMS OF CRIME ACT 1994* AND RELATED MATTERS

BACKGROUND

This submission is informed by my knowledge of the research on victims, law and justice, my involvement with rights researchers in Australia and elsewhere, and the performance of my role as Victims of Crime Coordinator under the ACT *Victims of Crime Act 1994* [VOCA] from 1996 to 2011.

The focus of this submission is the rights and treatment of people as victims of crime in the administration of justice, specifically criminal justice.

OVERALL COMMENT

I make the observation that, while there have been significant changes since 1994 to the way in which people as victims of crime have been treated within the administration of justice in the ACT, there is remarkable consistency to core problems and conceptual roadblocks.

First, it continues that the idea of *rights* for people as victims is considered primarily as *entitlements* for which no duty is imposed on public entities. A 'right' cannot be "balanced against practical considerations" (p.37). To call something a 'right' when it is not simply perpetuates a falsehood. As an entitlement, a provision can be discretionary for a justice entity depending on whether it is trumped by a legal right of another person, a variety of unregulated assessment criteria, whether the entity has deemed it a priority and/or if it has the resources to do so. For example, a person may be entitled to make a Victim Impact Statement (VIS) but they have no 'right' to do so (see Victims of Crime Commissioner [VoCC] consultation report [2017], pages 29, 33). The omission of a public entity in failing to inform and enable a person as victim to make such a submission may result in that person suffering a material loss. If victims 'rights' were real then such an omission may give rise to proceedings for relief.

The options paper says that the intention is to set up a 'charter of rights' and that these are proposed to be recognized in the ACT *Human Rights Act* 2004. In my view it is dishonest to make such proposals and then, at Q4.2.a for example, ask if they *really* should be *rights*.

Second, if all members of the ACT community, victims and accused persons together, are rights-holders under the *Human Rights Act*, then it is not a question of "balance" between the interests of these two groupings. Rather, duty-holders (police, prosecutors, courts, victim advocates and corrections) are required to uphold the human rights of both. Where there is the appearance of a clash (for example, the right of a female sexual assault complainant to wear

face cover to protect her dignity and reputation during her giving of public testimony and the male defendant's right to publicly confront his accuser then duty-holders must show how they turn their minds to protecting both sets of right to the extent that is reasonably possible. If a clash proves impossible to accommodate, then the different though shared rights should be argued before a court.

In essence, detailed consideration needs to be given as to how human rights as legally-enforceable rights discharged (s40B) by entities in the administration of justice for both groupings. For example, could the ACT community expect a prosecutor to argue for the female complainant's right to wear face cover and for the public's interest for open justice in a public court? Further, if the ACT community expects the Attorney General (s35) and/or the Human Rights Commissioner (s36) to intervene in a proceeding in relation to human rights, what circumstances can be envisaged where they may be engaged to do so for the right at issue for persons as victims? In another reasonably common example, if trial proceedings in relation to sexual assault are consistently raised with the VoCC as taking an unreasonable amount of time, does this not breach s22(2)(c) for victims as well as for accused persons? In such circumstances, a victim's right to privacy (s12) in returning to a private life without the threat of court proceedings may be impinged. Could this person as a victim initiate proceedings (s40C), and be supported or represented to do so?

This way of thinking about victims' 'rights' as substantive human rights should then necessarily guide consideration of accountability, complaints and allegations of a breach of a human right (discussed at pp. 10-12 in this submission).

It seems to me that a way forward is to do a detailed mapping of the procedural or soft law of the *Victims of Crime Act 1994* as underlying the substantive or hard law of the *Human Rights Act* 2004. Part of this exercise necessarily asks what duty-holders (police, prosecutors, victim advocates, courts and corrections) actually *do* to protect victims' human rights. Then the ACT community may begin to feel that both people as victims of crime have human rights as well as accused persons, and could begin to see more clearly when and how justice entitles as duty-holders to both groups discharge their duties.

Third, the 1985 UN Victims Declaration and the ACT VOCA both contain definitions for who is a victim. These do not then differentiate between victims of personal or property offences in the allocation of entitlements. Neither do they specify that some entitlements are provided to some according to personal characteristics of the victim (age, gender, ethnicity etc) or offence type. The *Human Rights Act* certainly does not say that some rights are for some and not for others. Therefore, if the VOCA provisions are to be characterized as "rights" and "human rights", then considerable care must be brought to the basis of strategic decisions about how rights are to be allocated in practice.

Fourth, the provision of general information and specific case-status information is consistently identified in the wider research (Shapland et al, 1985; Wemmers 1996) and in the ACT (Victims of Crime Coordinator, 2001) as a concern for people as victims. A small jurisdiction as the ACT should surely be able to address this in a sensible and sustainable manner. Information is foundational to the exercise of human dignity in that it enables persons to make informed decisions about their interactions with authority. Without it, a person is not recognized before the law (s8(1)), is unable to exercise her human rights (s8(2)), and is restricted from seeking effective and equal protection of the law (s8(3)).

In my previous role as Coordinator I worked with justice entities, policy-makers and services to devise different solutions to the challenge of information provision for all victims and only some progressed. What succeeded and what failed and why? The successes were human-resource based procedures between ACT Policing (ACTP) and Core Service Providers (Domestic Violence Crisis Service [DVCS] and Canberra Rape Crisis Centre [CRCC]) to transfer victim contact details so that these specialized services may initiate a response and then maintain that liaison with the victim. The protocols between these agencies provide for a consistent and robust partnership, allow for human intervention for flexibility, and carefully integrate the consent of the individual involved. What failed was a detailed proposal for an integrated database developed with careful consultation between the Coordinator, ACTP, the DPP and Magistrates Court. The budget proposal did not succeed. The prospect of integrated and real-time data sharing between criminal justice entities is notoriously difficult for well-known reasons. It is my view that a starting place is a human-resource based approach from the point when a member of the public reports their criminal victimization to police. All persons who do so should receive acknowledgement information as per the South Australian example. All subsequent information giving, case-status updates and case management arrangements flow from this starting point.

Fifth, the Victorian Law Reform Commission (2016) recommended that persons as victim (and witness) should be categorized as a *participant* within criminal justice proceedings. This is consistent with the jurisprudence of the International Criminal Court and other international tribunals. These do not presume that every victim is a participant, nor will always seek to participate and nor will seek legal representation. It is primarily a recognition of the distinct nature of this particular person or group of persons within judicial proceedings. The VLRC recommendation simply recognizes that in criminal proceedings the person as a crime victim is a rights-bearing individual who may or may not also undertake the role of witness for the prosecution. Designation as a participant recognizes them as separate and independent. A revised *Victims Charter* should specify that persons as victim for whom law enforcement or prosecution is proceeding is designated as a *participant* in the proceeding.

Finally, many if not most options in the consultation paper are made without any hard data about what actually takes place in the ACT. The report sets out, for example, the list of entities that provide information and support to persons as victim (p12). However, we are not given any data on the number of people assisted, or the proportion of all cases that receive this service nor data on what information these entities provide. Until responses are based on hard numbers that are set to clear standards of how many, by when and to what level of quality then it will be impossible for the ACT Government or community to assess how well people as victims are being served.

DETAILED COMMENT

Information

The options paper sets out some ideas for making general information available to any victim or member of the public one of which is an interactive website. During my time as Coordinator, a substantial project was mounted for an interactive website to enable people as victims to better understand the criminal justice process. Initial design allowed for adult and child interaction at different levels. The project was developed on an inter-agency basis. It was envisaged that all justice entities would rely on the interactive project to serve crime victims. However, it is apparent that this project devolved into a static set of web pages. Although the website provides accurate information, it is unclear why the interactive design did not eventuate. Answers to this question should inform responses to Rec 1.1a.

Recommendations for providing victims with general information and following-up with case-status updates are made (pp 20-22). General information is one form and is largely a passive exercise. Case-status updates are a second form of information. In my overall comment (above) I endorse a human-based approach rather than an integrated database in the first instance. The provision of information commences from the time a member of the public as a victim reports an incident to police (as per the SA example). Higher levels of information-giving should be developed from this basis and service standards developed against which agencies should report. I provide an example of what these standards might look like as an appendix to this submission.

A sensible and sustainable way forward is physical co-location of key police and victim support personnel as happens in some locations in Australia and overseas. These personnel may access designated modules in the police database in order to distribute general information and to subsequently manage provision of case status information in a pre-determined manner. At this point of co-location individual contact details and other key information may also be transferred (upon agreed consent standards) to Core Service Providers (Victim Support ACT, DVCS and CRCC) to upload into their own data systems to enable the case management of

clients (see below). The provision of general and case-specific information should be set out with target criteria, time frames and other quality assurance measures (see appendix). The aim is that all eligible victims receive basic general information and that certain categories are also subsequently in contact with one or other Core Service Provider for the purpose of case management. What I am recommending is a minimalist approach to co-location: it is for the purpose of information giving and transferring of individual contact information (as per agreed standards) and envisages case management and the delivery of victim services is done elsewhere. More prosaic solutions can be an effective way to begin. It presents a way of practically working through the complexities of what information to whom, by whom, when and in what format. Get the basics right first.

Case-status updates are a second form of information. Providing these updates to persons as victim is necessarily dynamic, inter-active and takes place over time. A specific justice entity is responsible for ensuring information within its function is accurate and will be primarily responsible for delivering it to the relevant individual. Case updates vary in complexity and consequence for the entity as well as for victims. Thus, policies and standards for case-status updates should be developed in a manner that is responsive to the victims and their circumstances, and the requirements of the agency. For example, I understand that the DVCS and CRCC receive victim contact information from ACTP which is then entered into their own client databases. This enables those specialist organizations to shoulder the responsibility of creating a framework that standardizes assessment, contact and on-going support. These then are able to manage assistance for the person from a basis of accurate, shared case-status information. A similar arrangement should be entered into with the Victims Commissioner who has overall statutory responsibility to ensure services to victims and to protect their rights. There are a number of examples of how co-location of personnel works that can be drawn on. A human-resource based approach may develop into an automated system or digital sharing over time. Get the basics right first.

Consent to the transfer of information is a crucial principle. At the same time, there are circumstances where this is difficult to achieve. A simple way forward is a step-by-step process: the first acknowledgement letter from police gives the incident number and informant's name and contact and states that:

> "the VOCA states that people who have become a victim of crime should have access to 'necessary material, medical, psychological and social assistance'. It is the policy of ACTP therefore to provide your contact details to an authorized victim support agency for the purpose of providing this assistance. You have the right to decline the support of that agency when they make contact with you."

Victim support agencies should then also adopt a pro-active contact policy along the lines of:

> "the VOCA states that people who have become a victim of crime should have access to 'necessary material, medical, psychological and social assistance'. It is our policy to offer this support to you when we first make contact, and then again at a second point within 7-14 days. It is our experience that people may initially decline support for a range of reasons and then later welcome it. However, at any point you have the right to decline our support. If you do so you are free to contact us at any time in the future."

The wording and standards of these texts are, of course, indicative. In section 4.2, the report goes on to ask whether certain case-status information should or should not be provided in a long list of circumstances. Being too specific about exactly what and exactly when risks leaving some participatory opportunities out. Provisions in the UN victims Declaration are a guide for the general right. A Code of Practice would provide the detail. It may be useful to think of a Cade as a regulatory instrument.

The justice entity that is primarily responsible for any particular decision should have primary responsibility to discharge the information and participatory opportunity. A secondary responsibility is the Victims Commissioner who has the statutory role to ensure it happens. Therefore it is, in part, a responsibility of the victim advocates to assist the person take up the opportunity. This approach satisfies 6(c) of the UN Victims Declaration that judicial and administrative processes should be facilitated by, 'providing proper assistance to victims throughout the legal process'.

Decisions and decision-making

The options report asks about victims 'right' to direct a police decision or a prosecution decision (p. 39). Here it is important to differentiate between the decision-making process and the decision itself. People as victims should have a right to be involved in the former but not the latter in the criminal justice process. At present, persons as victims can withdraw an allegation of a criminal complaint and can decline to be a witness for the prosecution. However, the police and the prosecution may still decide to proceed. In my view this is a correct approach.

Of particular note is the decision to prosecute or not and on what charge, and decisions on plea. Research and practice (as well as the Royal Commission and other enquiries) have acknowledged this is a particular flashpoint for persons as victim. Here the new legislation should be specific: the victim should be consulted, should be provided with opportunities to express their views and concerns, should be listened to, and should have reasons for decision made available. Additionally there should be a scaled review process: first with the decision-maker (the prosecutor in charge), then an internal review, then a Right of Review (VRR). The VRR ideally should be conducted by prosecutors from outside the ACT.

However, for all justice entities, the key is meaningful involvement: opportunity to provide views and concerns (including information about "what happened"), to be consulted, be listened to, and given reasons for decision.

Finally, the options paper asks whether victims should be able to give VIS, should be allowed to receive information about the sentence and conduct during sentence, and to provide submissions (pp. 46-50). Part of the challenge of these participatory opportunities is that these rely on persons as victim knowing what is available when and in what form. Therefore the question of registration is critical. Many if not most people fall between the gaps and do not know about registration or its consequence. Most are also not assisted to understand the implications. A central victim register for all these matters that is managed by the Victims Commissioner would ensure that (a) victims are informed of the options, and (b) are assisted to do so by victim advocates whose primary responsibility is the best interests of the victim. Splitting the registration formats and locations is inefficient and wasteful of resources and almost ensures victims interests are fragmented across systems. Centralizing responsibility would not obviate the obligation of related entities (Youth Justice, SAB for example) to discharge their legislative responsibilities to persons as victim.

Specialist and uniform case management

Victim specialist organizations such as the Victims Commissioner/ Victim Support ACT [VS ACT] and including the DVCS and CRCC are the only ones with responsibility to maintain on-going advocacy and support to victims across the entire justice journey from reporting to police to court to parole submissions and incorporating human service responses for their recovery. The Commissioner has statutory responsibility for effective and efficient services and VSACT was established under her functions as a one-stop shop to enable these responsibilities to be discharged. It is sensible that this concentration of responsibility, expertise and resource is consolidated and built upon. The aim is to simplify the system for those who need it and, as far as is possible, to facilitate the person's journey across the whole justice process. Needless to say, the principle upon which uniform and specialist case management is based is that every person as a victim should be assisted, and not just those who shout the loudest or who are considered more deserving.

Information sharing

The careful and select transfer of personal contact and related information of persons as victims from one help agency to another is generally undertaken on a case-by-case basis and in accordance with agreed protocols and principles. Services cannot serve clients well without undertaking some information sharing. However, I am extremely cautious about "information sharing" as a project or as some glibly pooled enterprise. There is too much that is unknown to

be able to support the proposal. Precisely what personal information is shared, with whom and to what end is that information secured? What standards of consent are required for an individual to give information, let alone to give consent for an organization to transfer it to another, and in what circumstances and with what constraints and limits? Thinking of the current controversy about My Health Record, can an individual opt-out of a shared database? Even if they opt-in, are they informed when information is shared with another agency? Currently victims are generally not even advised that a subpoena has been issued for their personal information and cannot therefore argue against it. How do proposals for information sharing accord with s12 of the *Human Rights Act,* or to s4(a) of the VOCA, let along to the requirements of the *Privacy Act*? In my previous role, I saw very many instances where victim information was handled in a manner detrimental to the rights and interests of the individual.

I do not support an information sharing hub without more detailed information on specifications. I note that both the Human Rights Commissioner and the Victims Commissioner have overall responsibility to ensure protection of the human right to privacy. Specialist victim organisations such as VS ACT, DVCS and CRCC have highly developed protocols about securing and managing the personal information of persons as victim. As specialist organisations these have particular responsibility to protect the rights and interests of crime victims.

If the *Human Rights Act* 2004 is, as I believe, to guide all considerations in reforming the *Victims of Crime Act* then an information sharing project (as opposed to carefully constructed bi-lateral sharing) may not contribute to protecting rights to dignity, privacy, reputation, and home life.

Legal advice, assistance and representation

People as victims already have access to a range of legal services. However, little information is provided in the options report about how these operate in practice, the number and proportion of victims who access them, and what legal issues victims seek advice about. Therefore I can only reflect on my experience as Coordinator where it was abundantly clear that the Justice Advocacy specialists in VSACT had significantly more experience of the law in practice and of up-to-date legislative changes across different areas of law than did many in private practice. This is because it was *their job to be expert victim specialists*. The US National Crime Victim Law Institute calls this body of knowledge, Victim Law. As specialists, the advice of victim advocates to members of the public was couched in terms of an understanding of how things worked in practice and how legal systems and pathways might interact with the individual's circumstances and aspirations. Individuals were always given referral information to the relevant legal service or to the Law Society.

So what then is the additional legal advice and assistance need? This is unclear. The capacity of Legal Aid to assist persons as victims is both a matter of policy and priority imposed by funders.

Some victims have more options than others given specialist community legal advice providers; for example for women victims (notwithstanding the pressure of demand). However, from my experience there is a significant gap in representation, specifically to protect certain rights. During my time as Coordinator, advocates were often forced to rely on pro bono assistance to clients. Sometimes this worked well and at other times, non-fee paying clients slipped to the bottom of the pile.

The options given in the report appear to suggest either/or but all are actually part of a legal assistance continuum. One area, that of legal representation, was and remains a vexed question. Part of the problem is that little to no work has been done to understand precisely what range and types of legal issue victims may seek representation for and in what legal arena. There is some evidence from the US that issues of privacy, reparation and restitution and participatory rights are the focus of legal representation in criminal proceedings but are not confined there (Cassell et al, 2015). We do not know what this might look like in Australia but could envisage rights-focused legal representation as one way to build knowledge and expertise.

Therefore, options 2, 3 and 4 necessarily work together and should be supported. I would additionally support the suggestion that a pool of funds is made available to the Victims Commissioner and/or the Commissioner is able to brief a matter out via the Government Solicitor. I would suggest that such legal intervention by the Commissioner focus on questions of rights protection and that the right in question is noticeably relevant to victims broadly and/or relevant to particular sub-sets of persons as victim. For example, challenging subpoenas for counselling records, health records and other private information as substantively irrelevant to the proof of the charges (see p. 44) goes to right to privacy and reputation and will be relevant to adult and child victim and especially (though not only) in sexual assault matters.

Targeted support

I am pleased that the research (2009) conducted by myself and others with and for Aboriginal and Torres Strait Islander victims of violence is finally being brought to the fore. The findings of this work – for specialist, flexible and practical assistance – are supported by later research I conducted (with colleagues) in 3 locations including ACT (Putt et al, 2017).

I am unconvinced about the recommendation for an intermediary scheme (see accompanying article by Powell et al., 2014). I do not argue that certain vulnerable groups have very negative experiences of the criminal justice process in particular. But I do doubt the strategic benefit of the investment given other systemic, substantive and persisting problems that, if properly addressed, would make a significant improvement for all persons as victim. For example:

- Target the time taken from disclosure to first court date, and from first court date to finalization. These two inter-connected issues are critical to victim experiences. Aim for much shorter times.
- Focus on ensuring continuity of investigator and prosecutor especially in violence cases. The relationship these personnel develop (or should develop) with victims is crucial. Agencies should have procedures that enable 'vertical prosecution'; that is, the same prosecutor throughout the proceedings. If the investigator and prosecutor relations with victims are done correctly, then the need for an intermediary is reduced.
- Provide resources for victims to have continuity of victim advocate/support worker from time of reporting to police to court and through to engagement with corrections. These are the only personnel who have this case management relationship. In addition to keeping track of dates and facilitating participatory opportunities, these personnel are the lynchpin in victim recovery planning. All victims who engage with the criminal justice process still do not have reliable information provision, robust and sustained case management (Note the Commissioner's references to the 6-8 week wait for a case manager, 2017), nor ready access to a victim advocate and practical assistance.
- Finally, why are reform aspirations set so low as to suggest a band-aid initiative as an intermediary scheme? The lack of imagination and creative thinking about the problems the adversarial system creates is profound in this options report. The ACT is a small jurisdiction with sophisticated justice and victim advocate personnel. It is not beyond the wit of people in the system to implement a small experiment with, for example, a child-focused inquisitorial court that integrated victim support, protection of everyone's human rights, and maximizing swift resolution.

Participatory rights

Participation is a fuzzy term that can mean many things. The foundational standard is given in the 1985 UN Declaration that "access to justice and fair treatment" includes:

> Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

This is an expansive provision that does not need the level of specification proposed in the options report. For example, the term "views and concerns" can encompass protection concerns, impact views and related issues. The term "at appropriate stages" is broad and it could reasonably be assumed that legislation designed to promote victims' interests would determine that "appropriate" is permissively defined. A note under the relevant provision could

make it clear that what an "appropriate" stage is will include and is not limited to charge decisions, bail, decisions to prosecute, court proceedings, community corrections and parole. Participation is only limited to "where personal interests are affected" which again encompasses (and is not limited to) concerns for privacy, reputation, safety, freedom of movement and so on.

I do not understand therefore the substantive difference between medium and high participation (p.35). There is a tendency in the report to assert "participatory rights" and then collapse this into an action that is anything but. For example, at 4.2.2(p 38), a right to present views and concerns at bail (and bail variation) decisions and be consulted in decision-making should not be considered simply as being "better notified".

Adoption of wording similar to the UN provision should be strengthened by replacing "allowing" with "have the right to present and be consulted on ...".

The options paper asks about 'special measures' to support victims to participate (p. 42-43). I submit that the basic principle should be that any member of the public who is being asked to perform a civic duty as a witness should be properly and reasonably supported to do so. I have never understood the approach which is based on some persons being supported as witness and others not. Why continue to make it harder for people? Why should they be made to jump through hoops such as to show they are traumatized or that they fit some or other criteria? As such, included in the new legislation should be an obligation for: `Providing proper assistance to victims throughout the legal process` (UN Victims Declaration 6(c)). Whether or not a person is traumatized or anything else is irrelevant to the primary interest of the ACT community being to assist any and all persons to give witness in the fair administration of justice.

The options paper also asks whether victims should have 'rights' to closed or open courts and so forth. Why pick and choose these particular opportunities? I have had victims ask for suppression of evidence, suppression of identity and for closed court. The main point is the one made above: how best can we support and assist any and all persons performing their public duty to give witness?

Accountability & oversight

Accountability for rights protection is distributed formally. One way is legal intervention and I have agreed with the suggestion in the options report that the Commissioner be allocated resources to mount legal representation. I am unaware of cases where the Attorney or the Human Rights Commissioner has intervened in a proceeding to protect a right. The Victims Commissioner with the HR Commissioner should be encouraged to maintain active watch for persisting areas of rights breach in the administration of justice and which appears to affect

numbers of victims or a sub-set of victims. They share responsibility to protect the human rights of persons as victim.

Of course, not all rights subject to remediation only follow a legal path. Allegations of a breach of a human (victim) right in the ACT may, in the first instance, be undertaken as a service complaint. Thus normal internal review processes apply. In such circumstances how is the extent of rights/service complaint by victims made public so that the ACT Government and community might know? Is it part of annual reporting obligations by relevant justice entities? Does reporting of complaints specify those which are made by persons as victim? If there are complaints of a serious nature, how are these made transparent? I have already made comment that the absence of standards (as per a detailed Code of Practice) make it impossible for anyone to know what is being done for whom, in what time frames and so on. Any reporting needs first to grapple with standards.

The current system for complaints – whether to the Ombudsman, the Human Rights Commissioner, the Victims Commissioner or other – all follow the same basic path: attempt to deal with the complaint or problem with the agency directly and escalate as necessary. If there is a thread to my submission it is that an overall aim should be to make processes as simple as possible for members of the public, whether to give witness, to access support or to make a complaint. Given that the Victims Commissioner and staff are now located in the HR Commission and victims' rights are to be designated human rights, then it makes sense for this to be the primary gateway for formal complaint. How the HRC then distributes these internally is a key question. It would seem to me that intake should be directed first to Commissioner dealing with all complaints and second to the Victims Commissioner to make relevant enquiries and conciliate. It is important that she is continually aware of any problems in the system and with regard to rights for which she has statutory responsibility to promote and protect. All commissioners in the HRC are independent, but none are neutral in that all have a responsibility to promote and protect rights.

None of these processes are mutually exclusive and persons as victim may choose to go through one pathway and not another. An interagency complaints body sounds like a recipe for inefficiency. Complaints handling and resolution is necessarily an inter-agency exercise in information gathering.

The Victims Commissioner should report annually on all concerns and complaints. Formal investigations should be subject to the usual process whereby an entity has an opportunity to comment on preliminary findings and proposed remedies (if any). Ultimately, the Commissioner must make a finding. Formal findings should then be provided to complainant, the practitioner complained of, their employing entity, the Attorney and ultimately to Parliament.

The types of remedy proposed in the options paper include apology, undertakings to remedy procedural problems and prevent reoccurrence, to provide agency training, and/or some internal action with regard to the individual practitioner. Whether there should be substantive relief would depend on the issue complained of. For example, if a prosecutor omitted to submit a reparation request despite having information of the complainant's losses then the civilian has incurred a material loss due to that omission. It seems to me that there are some circumstances where financial or other relief is relevant.

A key problem encountered during my term as Coordinator was that there was no provision for pathway or action or remediation following an investigation or finding. I developed a practice from studying other complaint resolution processes. I have previously recommended that preliminary findings are provided to the parties. Their comment would be included in decision-making. A final report with recommendations should go to the Attorney. The Attorney should make a decision within a certain time frame. The report (possibly with redacted identifying information) and the Attorney's decision should be tabled in Parliament within a certain time frame.

Systemic review is another mechanism that is extremely important. Models of how this can be done are numerous (for example in Victoria). The Victims Commissioner should be provided access to information by relevant justice entities to enable such substantive systemic reviews to be conducted.

Other matters

The Regulations governing the victims' services scheme were developed for another time. They are seriously out of date and create unnecessary paperwork. These should be reviewed and streamlined as a matter of priority to take account of present arrangements. For example, how case management incorporates an integration of victim recovery services, financial assistance and justice advocacy. The individual member of the public should encounter a simple process that is focused on assisting them and not a complicated series of steps the purpose of which is to satisfy some issues that are incomprehensible to them. Integrated case management within VSACT should be sufficiently broad to allow for future evolution as proposed in the options paper and this submission.

Table 1: Example of Standards for Service-level Information Provision[1] to Victims in the Administration of Justice[2]

Level	VLRC Definition	Offence	Service	Lead Agency	Standard	Victim
Level 1	Low	All persons as victims of crime who report an offence to police	Receive letter (or some other form) acknowledging report, providing case number and contact for further case information. Also provides contact information for primary support service(s)	Police	Within 48 hours	Mandatory unless specific replacement with other mechanism
Level 2	Medium	All persons as victims of violent crime who report an offence to police	Receive pro-active follow-up contact to receive further victim information and to provide rapid assessment of victim needs for action.	Police & Core Service Providers (VoCC, DVCS, CRCC)	Within 3-5 working days	Mandatory unless specific replacement with other mechanism. Victim may opt-out from further updates
Level 3	High	All persons as victims of violent crime where an offence is proceeding to prosecution decision	Receive pro-active follow-up contact to receive further victim information and to provide rapid assessment of needs for action.	Police & Core Service Providers (VoCC, DVCS, CRCC)	Within 5-10 working days	Mandatory unless specific replacement with other mechanism. Victim may opt-out from further updates

[1] Where "*service-level information*" is defined in both case-specific and general terms as distinct to "*case-specific information*". The latter is generally understood as "*case updates*" related to decisions such as charge, prosecution, court decision, and so forth. "Case update" information combines 'hard' information about decisions and dates, and also 'discursive' information in relation to which the provider and the individual have interactive and open discussion about options and implications. For example, providing information about correctional/parole victim registration plus discussion about participation and any individual implications.

[2] NOTE: does not preclude persons as victim from making pro-active contact with any justice or service entity on her own initiative.

Table 2: Example of Standards for Case-status updates[1] to Victims in the Administration of Justice[2]

Level	VLRC Definition	Offence	Service	Lead Agency	Standard	Victim
Level 1	Low	All persons as victims of crime where a criminal charge is proceeding in relation to the offence	Receive letter (or some other form) providing info about the charges, relevant court dates, and information relating to participatory opportunities for victim views and concerns (bail, hearings, VIS, victim registration). Also provides contact information for prosecution office and primary support service(s)	Police	Within 48 hours of charge decision	Mandatory unless specific replacement with other mechanism
Level 2	Medium	All persons as victims of violent crime where a criminal charge is proceeding in relation to the offence	Receive pro-active follow-up contact to receive further case information about rights and responsibilities in criminal process and to provide rapid assessment of witness needs and/or special support for action.	Prosecution & Core Service Providers (VoCC, DVCS, CRCC)	Within 3-5 working days and then through process (as necessary)	Mandatory unless specific replacement with other mechanism. Victim may opt-out from further updates
Level 3	High	All persons as victims of violent crime where a criminal charge is	Receive pro-active follow-up and case management throughout judicial proceedings.	Prosecution & Core Service Providers (VoCC, DVCS,	Within 5-10 working days and then through process	Mandatory unless specific replacement with other

		proceeding to prosecution and where there has been an assessment of **special** needs of some description.	Core Service Providers (VoCC, DVCS, CRCC) may continue case mgt beyond court finalization re corrections/parole and/or other legal processes.	CRCC)		mechanism. Victim may opt-out from further updates
Level 4	High	All persons as victims of violent crime where a criminal charge is proceeding to prosecution and where there has been an assessment of **exceptional** needs of some description.	Receive pro-active follow-up and case management throughout judicial proceedings. Core Service Providers (VoCC, DVCS, CRCC) may continue case mgt beyond court finalization re corrections/parole and/or other legal processes.	Prosecution & Core Service Providers (VoCC, DVCS, CRCC)	Within 5-10 working days and then through process	Mandatory unless specific replacement with other mechanism. Victim may opt-out from further updates

[1] Where "*case updates*" are related to decisions such as charge, prosecution, court decision, and so forth, and the processes that flow from these. "Case update" information combines 'hard' information about decisions and dates, and also 'discursive' information in relation to which the provider and the individual have interactive and open discussion about options and implications. For example, providing information about correctional/parole victim registration plus discussion about participation and any individual implications.

[2] NOTE: does not preclude persons as victim from making pro-active contact with any justice or service entity on her own initiative.